

## Chapter 3.35 - AFFORDABLE HOUSING FUND

### 3.35.010 - Purpose.

- A. There shall be deposited into the affordable housing fund all moneys paid to the County in lieu of providing residential workforce housing units, any council appropriations to the fund, and all moneys donated to the County for affordable housing projects. The revenues and unencumbered balance in the fund shall be used for the provision, protection, and expansion of affordable housing and suitable living environments for residents ~~of very low to~~ with a gross annual family income of 80 percent or less of the area median income as established by the United States Department of Housing and Urban Development, or as adjusted by the department, for Hana, Lanai, and Molokai gap income, including the rehabilitation of existing structures, land purchase or other acquisition of land or property entitlements, planning, design, and construction.
- B. In adopting fiscal years 2008 through 2021 annual operating budgets and capital improvement programs, the council shall appropriate a minimum of two percent of the certified real property tax revenues to the affordable housing fund. Any appropriations to this fund shall not substitute, but shall be in addition to, those appropriations historically made for the purposes stated in this chapter.
- C. The revenues and unencumbered balance in this fund shall not be used for any purpose except those defined in this chapter.
- D. On an annual basis, no more than three percent of this fund shall be used for administrative expenses.

( Ord. 4323, § 2, 2016 ; Ord. No. 3817, § 1, 2011; Ord. 3481 § 1, 2007:  
Ord. 3418 § 2, 2006)

### 3.35.020 - Fund established.

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Keani Rawlins - Fernandez.



There is established and created a fund to be known as the "Affordable Housing Fund."

(Ord. 3418 § 2, 2006)

### **3.35.025 - Definitions.**

A. Whenever used in this chapter, unless a different meaning clearly appears from the context, the definitions in section 2.96.020 of this code shall apply.

~~B. "Gap income" shall refer to those households whose gross annual family income is more than one hundred forty percent, but not more than one hundred sixty percent, of the area median income as established by the United States Department of Housing and Urban Development or as adjusted by the department of housing and human concerns, for Hana, Lanai, and Molokai.~~

( [Ord. 4323, § 3, 2016](#) ; Ord. 3481 § 2, 2007)

### **3.35.030 - Administration.**

A. The director of finance shall establish a separate account to record revenues and supplemental transfers credited to, and expenditures made from, the fund.

B. Any unencumbered balance in the fund at the end of each fiscal year shall not lapse, but shall remain in the fund, accumulating from year to year.

C. The director of housing and human concerns shall administer the fund.

D. The director of housing and human concerns and the director of finance may adopt administrative rules necessary to carry out the purposes of this chapter.



- E. Revenues received from a developer to partner with a nonprofit organization or community land trust are deemed appropriated upon receipt and are authorized to be expended for the purposes of the fund.

(Ord. No. 3817, § 2, 2011; Ord. 3418 § 2, 2006)

### **3.35.040 - Use of fund.**

The council may make appropriations from the affordable housing fund for the following:

- A. To increase the supply of affordable, rental, and owner-occupied housing;
- B. To acquire interests in real property for purposes set forth in this chapter;
- C. For planning, design, or construction of affordable rental or owner-occupied housing for residents within income-qualified groups;
- D. To provide housing for elderly, disabled, and homeless residents lacking a permanent home;
- E. To provide grants or loans to any nonprofit or community land trust that complies with Section 501(c) of the Internal Revenue Code and any other requirement under federal, state, and county law regulating the conduct of charitable or nonprofit organizations, provided that the purpose of any grant or loan shall be for the purposes set forth in section 3.35.010 of this chapter;
- F. To leverage funds provided by federal, state, nonprofit, or for-profit organizations and other non-County entities to further expand affordable housing opportunities;



- G. To acquire existing housing or cooperative units for rehabilitation as affordable rental or owner-occupied housing, or both; or
- H. To increase investment in public infrastructure in connection with related affordable housing projects.

(Ord. 3481 § 3 (part), 2007)

### **3.35.050 - Term of affordability.**

- A. ~~Ownership housing units financed by the affordable housing fund shall be subject to the restrictions of subsection 2.96.060(B) of this code. Rental housing units financed by the affordable housing fund shall be subject to the restrictions of subsection 2.96.070(C) of this code.~~ Housing Projects subsidized by this fund must directly advance the objective of providing affordable housing in perpetuity, under the director's supervision. Models of affordability in perpetuity, include, but are not limited to: managed appreciation formulas that insulate the housing from market rate appreciation; shared equity formulas; and projects that are owned by a community land trust.
- B. The restrictions imposed by this section shall run with and bind the housing units, and the department shall record such restrictions with the bureau of conveyances or the land court of the State.

( [Ord. No. 4323, § 4, 2016](#) ; Ord. No. 4177, § 12[13], 2014; Ord. 3481 § 3 (part), 2007)

### **3.35.060 - Criteria for selection of grant or loan proposals.**

- A. Grant or loan proposals submitted shall include:
  - 1. A detailed description of the proposed project and an outline of the income categories the project will serve;



2. A brief overview of a long-term management plan for the proposed project; and
  3. A description of all efforts to leverage or match funding from non-County sources for the subject project.
- B. Grant or loan proposals shall meet the following criteria for approval:
1. Demonstrate that the subject project is consistent with the requirements set forth in section 3.35.010 of this chapter;
  2. Demonstrate that the subject project can be effectively managed and maintained as affordable and significantly contribute to the creation of affordable housing units; and
  3. Demonstrate that the subject project directly advances the objective of providing affordable housing in perpetuity.

(Ord. 3481 § 3 (part), 2007)

### **3.35.070 - Grant or loan requirements.**

- A. A grant or loan agreement for distribution of funds shall contain the following conditions and restrictions:
1. Title to any real property shall be held in perpetuity by grantee/borrower unless conveyed to the County, or to a qualified nonprofit or community land trust;
  2. The grantee/borrower shall submit annual reports to the department documenting the progress toward implementing long-term management of the affordable housing project;
  3. The subject project shall not be sold, exchanged, divested, or converted to other uses that are inconsistent with the purposes set forth in this chapter without the prior approval of the council by resolution;



4. In the event that the grantee/borrower dissolves or is adjudicated bankrupt pursuant to any applicable federal statute, title to any real property which has been funded or improved by a grant or loan issued from the fund shall be conveyed to the County, or to a qualified nonprofit or community land trust as approved by the council; and
  5. The grantee/borrower shall not distribute or redistribute grant or loan funds to other third-party organizations without the prior approval of the council.
- B. Loans from the fund shall:
1. Be secured by a first mortgage lien in favor of the County, or, subject to council approval, be secured by a second mortgage lien in favor of the County;
  2. Have a term set by the director;
  3. Require the borrower to execute a promissory note in favor of the County;
  4. Include an interest rate set at three per cent per annum; and
  5. Be recorded with the bureau of conveyances or the land court of the state.
- C. In the event of a loan default, or if the subject project is not serving the affordable housing needs as set forth in this chapter, the following may be required of the borrower:
1. Forfeit the land or property to the County; and
  2. Full repayment of principal balance at an annual interest rate equal to two times the prime rate at the time of default.

(Ord. 3481 § 3 (part), 2007)

### **3.35.080 - Affordable housing fund annual plan.**



The department shall propose an affordable housing fund annual plan for the use of affordable housing fund revenues, and transmit the affordable housing fund annual plan to the council for its consideration, along with a budget amendment or a request that the projects in the annual plan be included in a fiscal year budget. The affordable housing fund annual plan shall include the following:

- A. A description of the projects to be funded, including grants and loans, with a completed grant or loan proposal for each project;
- B. The total proposed appropriations for the subject fiscal year;
- C. The number of housing units that will be created and residents to be served;
- D. If housing is not the immediate result from a proposed appropriation, such as land acquisition or infrastructure improvements, provide an explanation on how the appropriation will result in housing; and
- E. The total expenditure for administrative expenses, which shall be consistent with section 3.35.010(D) of this chapter.

(Ord. No. 3779, § 1, 2010; Ord. 3481 § 3 (part), 2007)

### **3.35.090 - Annual report.**

- A. The department shall prepare and submit an annual report to the council on the expenditures and accomplishments resulting from appropriations from the affordable housing fund. The annual report shall provide the following information:
  - 1. The number and types of units created or assisted.
  - 2. Any non-dwelling unit improvements, such as land acquisition or infrastructure improvements.
  - 3. The geographic distribution of units or funded projects.

4. Statistical data relative to the incomes of the households assisted.
  5. The amount of state, federal, and private funds leveraged or matched.
  6. Sales or rental prices established.
- B. The report shall also include an overview of how the department has met affordable housing fund annual plan goals and objectives.

( [Ord. 4323, § 5, 2016](#); Ord. 3481 § 3 (part), 2007)

### **3.35.100 - Project expenses.**

Funds are deemed appropriated by project and not by fiscal year.

( [Ord. No. 4323, § 5, 2016](#); Ord. No. 3779, § 2, 2010; Ord. 3481 § 3 (part), 2007)